THE HON'BLE SRI JUSTICE N.V. RAMANA

W.P. No. 4378 of 2001

O r d e r:

The petitioner, which is an industry, is assailing the order dated 06.02.2001, passed by respondent No.1, namely the Controlling Authority under the Payment of Gratuity Act and the Assistant Commissioner of Labour, Hyderabad, awarding simple interest on the principal gratuity amount payable by the petitioner to respondent No.2, from the date it became due and payable till the date it was paid.

Respondent No.2 was an employee with the petitioner. While so, on the ground of wrongful possession of cigarettes, he was charge sheeted. An enquiry was conducted into the charges, and based on the enquiry report, the petitioner dismissed respondent No.2 from service. Respondent No.2 raised an industrial dispute in I.D. No. 604 of 1993, and the Labour Court passed an award on 02.05.1995, modifying the order of dismissal, treating respondent No.2 to have been discharged from service on 28.12.1989, and as such, he is entitled to all retirement benefits, except backwages. The petitioner did not challenge the said award before any higher forum, and as such, the award attained finality. Pursuant to the said award, the petitioner paid the retrial benefits, including gratuity. Respondent No.2 contending that he is entitled to interest on the amount of gratuity for the delayed payment, filed a claim petition before respondent No.1, who by reason of the order impugned in this writ petition, allowed the same.

Heard the learned counsel for the petitioner. The learned counsel for respondent No.2 was not present, and on request
Sri. G. Ravi Mohan, Advocate, advanced arguments on behalf of respondent No.2.

The learned counsel for the petitioner submitted that though the award dated 02.05.1995 passed by the Labour Court modifying the punishment of dismissal from service imposed by the petitioner on respondent No.2 to that of his discharge from service, has attained finality, the fact remains, the charge on which the order of dismissal from service was passed against respondent No.2, namely theft of

company property, which involves moral turpitude, was not disturbed by the Labour Court, the petitioner having regard to the provisions of Section 4(6)(1)(b)(ii) of the Payment of Gratuity Act, 1972, is entitled to withhold the gratuity, and mere release of the withheld amount, which is as per the award of the Labour Court, does not entitle respondent No.2 to claim interest on the delayed payment of gratuity.

Mr. G. Ravi Mohan, who advanced arguments on behalf of respondent No.2 submitted that inasmuch as the award of the Labour Court modifying the punishment of dismissal from service imposed by the petitioner on respondent No.2 to that of his discharge from service, holding that he is entitled to all the retirement benefits as though he retired from service on attaining superannuation, has attained finality for the petitioner has not preferred any appeal there against, and having regard to the fact that the petitioner has released the gratuity after expiry of the statutory period, respondent No.2 is entitled to claim interest on the delayed payment, and payment of interest on the delayed payment of gratuity is not discretionary, but mandatory. In support of this submission, he placed reliance on the judgment of the apex Court in **H. Gangahanume Gowda v. Karnataka Agro Industries Corpn. Ltd.**.

The petitioner does not dispute the fact the award of the Labour Court, modifying the order of dismissal from service imposed by them on respondent No.2, to that of his discharge from service, has attained finality inasmuch as they did not prefer any appeal against the said order. The petitioner also does not dispute the fact that the Labour Court while modifying the punishment, held that the petitioner is entitled to all the retirement benefits as though he retired from service after superannuation. Therefore, by virtue of the award of the Labour Court, respondent No.2 is entitled to all the retrial benefits, which the petitioner does not dispute, includes gratuity, and which was already paid to respondent No.2.

It may be noticed whether respondent No.2 is entitled to claim interest on delayed payment of gratuity. Section 7(3-A) of Payment of Gratuity Act, 1972, mandates the employer to pay gratuity to the employee within time, and to pay interest on the delayed payment. Though the petitioner, pursuant to the award of the Labour Court, paid gratuity to respondent No.2, the fact remains it did not pay the same within time. Inasmuch as the petitioner had not paid the gratuity within time, respondent No.2 having regard to the provisions of Section 7(3-A) of the Payment of Gratuity Act, 1972, is entitled to claim interest on the delayed payment of gratuity.

In **H. Gangahanume Gowda v. Karnataka Agro Industries Corpn. Ltd.**, the apex Court having considered the provisions of Section 7(3-A) of the Payment of Gratuity Act, 1972 held:

> Payment of gratuity with or without interest, as the case may be, does not lie in the domain of discretion, but is a statutory compulsion. Specific benefits expressly given in a social beneficial legislation cannot be ordinarily denied. Employees on retirement have valuable rights to get gratuity and any culpable delay in payment of gratuity must be visited with the penalty of interest.

Merely because the Labour Court did not disturb the guilt of respondent No.2, while modifying the punishment imposed against him, it does not mean that respondent No.2 is not entitled to claim interest on delayed payment of gratuity, and more so when the petitioner did not assail the award of the Labour Court, which while modifying the punishment, held that respondent No.2 is entitled to all the retrial benefits as though he retired from service on attaining superannuation. The award of the Labour Court having attained finality, and the petitioner having paid the gratuity in terms thereof, cannot contend that respondent No.2 is not entitled to claim interest on the delayed payment of gratuity.

For the foregoing reasons, there is no merit in the writ petition, and the same is accordingly dismissed.

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N.V. RAMANA, J.

Date: 09th March, 2006.

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